

radius of Des Moines Municipal Airport (latitude 41°32'10" N., longitude 93°39'28" W.); and that airspace extending upward from 1,200 feet above the surface beginning NE of Des Moines at latitude 42°00'00" N., longitude 92°53'00" W., thence W along latitude 42°00'00" N. to and S along longitude 94°-00'00" W., to and W along the S edge of V-172, to and S along longitude 94°42'00" W., to and E along the N edge of V-6, to longitude 94°25'00" W., thence SE to latitude 40°55'30" N., longitude 93°54'00" W., thence E to latitude 41°10'00" N., longitude 92°-53'00" W., thence N to the point of beginning.

#### NEWTON, IOWA

That airspace extending upward from 700 feet above the surface within a 4-mile radius of the Newton Municipal Airport (latitude 41°40'40" N., longitude 93°01'25" W.); and within 2 miles each side of the Newton VOR 149° radial extending from the 4-mile radius area to the VOR.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on June 14, 1965.

EDWARD C. MARSH,  
Director, Central Region.

[F.R. Doc. 65-6614; Filed, June 23, 1965; 8:45 a.m.]

[Airspace Docket No. 65-CE-30]

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

#### Designation of Control Zone and Transition Area

On April 8, 1965, a notice of proposed rule making was published in the FEDERAL REGISTER (30 F.R. 4553) stating that the Federal Aviation Agency proposed to designate controlled airspace in the Columbus, Nebr., terminal area.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. Due consideration was given to all relevant matters presented. The Air Transport Association offered no objection to the airspace designation as proposed. A request to have Brandt's Airstrip near Columbus, Nebr., excluded from the proposed control zone was received from Mr. Norman Brandt, owner of said airstrip. The Agency has determined that the control zone cannot be adjusted so as to exclude the Brandt Airstrip without impairing safety.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., August 19, 1965, as hereinafter set forth.

(1) In § 71.171 (29 F.R. 17581) the following control zone is added:

#### COLUMBUS, NEBR.

Within a 5-mile radius of the Columbus Municipal Airport (latitude 41°26'50" N., longitude 97°20'25" W.), and within 2 miles each side of the Columbus VOR 340° and 141° radials, extending from the 5-mile radius zone to 8 miles N and SE of the VOR, and within 2 miles each side of the 330° bearing from the Columbus RBN, extending from the 5-mile radius zone to 8 miles NW of the RBN. This control zone shall be effective during the times established by a Notice to Airmen and continuously published in the Airman's Information Manual.

(2) In § 71.181 (29 F.R. 17643) the following transition area is added:

#### COLUMBUS, NEBR.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Columbus Municipal Airport (latitude 41°26'50" N., longitude 97°20'25" W.), and within 8 miles NE and 5 miles SW of the Columbus VOR 141° radial extending from the VOR to 12 miles SE, and within 8 miles W and 5 miles E of the Columbus VOR 340° radial extending from the VOR to 12 miles N and within 8 miles SW and 5 miles NE of the 330° and 150° bearings from the Columbus RBN extending from 2 miles SE of the RBN to 12 miles NW of the RBN.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on June 14, 1965.

EDWARD C. MARSH,  
Director, Central Region.

[F.R. Doc. 65-6615; Filed, June 23, 1965; 8:45 a.m.]

[Airspace Docket No. 65-CE-37]

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

#### Alteration of Control Zone, Designation of Transition Area and Revocation of Control Area Extension

On April 7, 1965, a notice of proposed rule making was published in the FEDERAL REGISTER (30 F.R. 4490) stating that the Federal Aviation Agency proposed to alter the controlled airspace in the vicinity of Watertown, S. Dak.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. The only comment received was from the Air Transport Association, wherein they expressed their concurrence with the proposed alteration.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0001 e.s.t., August 19, 1965, as hereinafter set forth.

(1) § 71.165 (29 F.R. 17557) the Watertown, S. Dak., control area extension is revoked in its entirety.

(2) § 71.171 (29 F.R. 17581) the Watertown, S. Dak., control zone is amended to read:

#### WATERTOWN, S. DAK.

Within a 5-mile radius of Watertown, S. Dak., Municipal Airport (latitude 44°54'35" N., longitude 97°09'30" W.), within 2 miles each side of the Watertown VOR 185° radial, extending from the 5-mile radius zone to 11 miles S of the VOR, and within 2 miles each side of the 146° bearing from Watertown Municipal Airport, extending from the 5-mile radius zone to 12 miles SE of the airport.

(3) In § 71.181 (29 F.R. 17643) the following transition area is added:

#### WATERTOWN, S. DAK.

That airspace extending from 700 feet above the surface within a 9-mile radius of Watertown, S. Dak., Municipal Airport (latitude 44°54'35" N., longitude 97°09'30" W.), within 2 miles each side of the Watertown VOR 185° radial extending from the 9-mile radius area to 20 miles S of the VOR, and within 5 miles E and 8 miles W of the Water-

town VOR 006° radial extending from the VOR to 12 miles N of the VOR; and that airspace extending upward from 1,200 feet above the surface south of Watertown bounded on the E by longitude 96°50'00" W., on the S by latitude 44°34'00" N., on the W by longitude 97°21'00" W. and on the N by latitude 44°56'00" N., the airspace northwest of Watertown within 5 miles NE and 8 miles SW of the Watertown VOR 297° radial extending from the VOR to 30 miles NW of the VOR, and the airspace north of Watertown within 6 miles W and 5 miles E of the Watertown VOR 006° radial extending from the VOR to 39 miles N of the VOR.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on June 14, 1965.

EDWARD C. MARSH,  
Director, Central Region.

[F.R. Doc. 65-6616; Filed, June 23, 1965; 8:45 a.m.]

[Airspace Docket No. 65-CE-57]

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

#### Withdrawal of Rule Modifying Control Zone

A rule modifying a certain portion of the Aberdeen, S. Dak., control zone, to be effective July 22, 1965, was published in the FEDERAL REGISTER on May 13, 1965 (30 F.R. 6578).

This airspace was to be modified due to the scheduled conversion of the Aberdeen, S. Dak., L/MF radio range to a radio beacon on July 22, 1965. The Federal Aviation Agency is now considering whether this radio facility will be needed. Therefore, the radio range will not be converted. Accordingly, the rule is being withdrawn.

In consideration of the foregoing, notice is hereby given that the rule contained in Airspace Docket No. 65-CE-57 is withdrawn. By reason of the foregoing, the Aberdeen, S. Dak., control zone will continue to include that airspace designated as "Aberdeen R.R. S course, extending from the 5-mile radius zone to 8 miles S of the R.R." until further notification by the Federal Aviation Agency.

(Sec. 307(a) of the Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on June 14, 1965.

EDWARD C. MARSH,  
Director, Central Region.

[F.R. Doc. 65-6617; Filed, June 23, 1965; 8:45 a.m.]

[Airspace Docket No. 65-WE-66]

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

#### Revocation of Transition Area

The purpose of this amendment to § 71.181 of the Federal Aviation Regulations is to revoke the Essex, Calif., transition area.

The Federal Aviation Agency has determined that the Essex, Calif., transi-



tion area is no longer required for air traffic control purposes and, therefore, is no longer justified as an assignment of controlled airspace. Action is taken herein to revoke the Essex, Calif., transition area.

Since this amendment is minor in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made immediately.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended as hereinafter set forth.

Section 71.181 (29 F.R. 17662) is amended by revoking the following transition area:

Essex, Calif.

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended; 72 Stat. 749; 49 U.S.C. 1348)

Issued in Los Angeles, Calif., on June 15, 1965.

JOSEPH H. TIPPETS,  
Director, Western Region.

[F.R. Doc. 65-6618; Filed, June 23, 1965; 8:46 a.m.]

[Docket No. 1464]

## PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

This amendment adds a new Part 137—Agricultural Aircraft Operations, to the Federal Aviation Regulations.

This amendment was originally proposed as a notice of proposed rule making issued as Draft Release No. 62-47 and published in the FEDERAL REGISTER on November 7, 1962 (27 F.R. 10848). As a result of the comments received the proposal was modified and republished in the FEDERAL REGISTER September 10, 1964, with a notice of public hearing (29 F.R. 12781). The new part basically follows the modified proposal contained in that notice of public hearing.

A large number of written comments were received on both notices. In addition, many oral comments were received at the public hearing held on November 5, 1964, at Oklahoma City, Okla. The Agency wishes to thank all those who have so contributed. The comments received have been very helpful in resolving the many issues involved in this rule making action. All comments have been carefully considered. It is only with the full participation of the aviation community that the Agency can be assured that its regulations are fair and adequately meet only demonstrated needs.

A large number of comments objected to the establishment of Agricultural Aircraft operator certificates and rules. These comments were based mostly upon the assumption that: (1) The regulations are unnecessary and discriminatory with respect to the aerial applicators since similar controls are not placed upon ground applicators, (2) agricultural aircraft operations are now adequately controlled by the States, (3) the Agency does not have the statutory

authority to require an operating certificate of the type proposed in these regulations.

The legal authority of the Agency was discussed in the original proposal (Draft Release No. 62-47) and at the public hearing conducted by the Agency. Section 307(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(c)) authorizes and directs the Administrator to prescribe, among other things, regulations for the protection of persons and property on the ground. The legislative history of this provision which did not appear in the previous provisions of the Civil Aeronautics Act of 1938, indicates the intent of the Congress to authorize the Administrator to place restrictions upon aircraft engaged in crop dusting and spraying as are necessary for the protection of persons and property on the ground. In addition, section 607 of the Act (49 U.S.C. 1427) provides ample authority for the Administrator to issue certificates not only for flight schools but for other air agencies, such as agricultural aircraft operators, as may be necessary in the interest of the public.

As stated at the public hearing, the Agency is not persuaded that the existence of some local laws relieves the Administrator of his statutory duty to prescribe adequate and uniform regulations not only for the safety of flight, but for the protection of persons and property on the ground. To perform this duty properly, we have concluded that this new Part 137 is necessary. The use of a certificate of waiver for agricultural aircraft operations has not been entirely satisfactory. By nature it is a negative approach as it authorizes nonobservance of air traffic rules without any control over the dispensing of the economic poisons from the aircraft. At the hearing concerning the buildup of pesticides in certain areas of this country, conducted by the Subcommittee on Reorganization and International Organizations of the U.S. Senate Government Operations Committee, in April of 1964, the need for regulations controlling the dispensing of economic poisons was brought to the attention of the Agency.

Whether similar controls should be adopted for operators of ground equipment used in the dispensing of agricultural chemicals is not, of course, a matter for decision by this Agency. However, to the extent that the dispensing of agricultural chemicals involves the use of aircraft, it is the responsibility of this Agency to decide whether additional controls are necessary for safety of the aircraft in flight and for the protection of persons and property on the ground. Moreover, this responsibility is not affected by the absence of similar controls by State and local governments over other means of dispensing.

In substance, Part 137 as adopted herein provides that an applicant for an agricultural aircraft operator certificate, or the person who is to be his chief supervisor, must pass tests on his knowledge of agricultural materials and their application and his agricultural aircraft flying skill. In addition, each pilot in command must pass a similar test. The knowledge test is designed to show his understanding of safe agricultural air-

craft operations and the proper handling and dispensing of economic poisons and other agricultural chemicals and materials. The flight test is designed to show that he possesses sufficient skill in performing basic agricultural aircraft flight maneuvers with an aircraft loaded to its gross weight. A "grandfather" clause would exempt from the knowledge test and the flight test requirements any person who holds a currently effective certificate of waiver at the time he applies for an agricultural aircraft operator certificate, and whose record of operation under the waiver has not disclosed any question regarding the safety of his flying or his competence in dispensing agricultural materials and chemicals. Pilots who have a satisfactory record while working for such operators are also covered by the grandfather clause.

The rules of Part 137 are directed to the safety of agricultural aircraft operations and the dispensing of materials during such operations. No attempt has been made to establish flight procedures for specific crops or to direct the use of particular application techniques, nor do the rules prescribe the kinds of chemicals or other materials to be used. However, it does prohibit the dispensing of economic poisons for a use other than that for which it is registered with the U.S. Department of Agriculture, contrary to any safety instructions on its label, or in violation of any federal law or regulation. Limitation of the use of an economic poison to its registered use with the Department of Agriculture which has federal responsibility for economic poisons registered for use, will assure its safety and efficacy in agricultural aircraft operations. The rules do not, of course, relieve the agricultural aircraft operator of the responsibility of complying with any State or local laws enacted pursuant to health and police powers relating to the dispensing of agricultural materials and chemicals. As in the past, compliance with such rules is a matter for the appropriate State or local authorities rather than this Agency.

As a result of the comments received and a further review within the Agency a number of changes have been made to the modified proposal. The changes are discussed in detail below.

1. Definitions of "agricultural aircraft operation", and "economic poison" have been added. These definitions follow generally the definitions of these terms as proposed in the original notice.

Written and oral comments received in response to the proposal objected to the use of the term "economic poison" in referring to certain agricultural chemicals and herbicides used in agricultural aircraft operations. These objections were based upon the contention that those chemicals and herbicides are not, in most cases, harmful to animal life, or because the public would associate the word poison with injury or death and thus object to its use.

The term "economic poison" as used in the Federal Insecticide, Fungicide and Rodenticide Act is defined in 7 U.S.C. 135. Since the regulation is intended to refer to economic poisons as defined by that Act, it would serve no useful pur-



pose to give them a different name under these regulations.

Other comments in regard to definitions strongly recommended the definition of the term "congested area" as contained in the original draft release. This definition was removed from the subsequent proposal because it was in conflict with the term as it is used in § 91.79 of the Federal Aviation Regulations. A congested area, as proposed in the original draft release and as recommended by the comments, would be determined by whether an emergency landing over the area would create a hazard to persons or property. Under § 91.79 the aircraft must remain above certain altitudes over a congested area and, except during takeoff or landing, it must in all cases be operated at an altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

In view of the conflict between these definitions it has not been incorporated in this part. Instead, the regulations as adopted herein prescribe operating rules for operations over congested areas and over other than congested areas. If, as in the past, an operation is to be conducted over a congested area the rules permit the operation to be conducted with both single and multi-engine aircraft. Moreover, as in the past the operation may also be conducted below the altitudes prescribed in § 91.79 when necessary for the accomplishment of the agricultural aircraft operation under prescribed conditions and limitations which are basically the same as those issued in conjunction with the issuance of the former certificate of waiver. The Agency believes that this procedure will provide a maximum of safety consistent with the operation.

2. The substance of proposed § 137.13 Designation of certificate has been included in § 137.1.

3. The last three words "or otherwise terminated" have been dropped from proposed § 137.19 (now § 137.13) to make it clear that, if an agricultural aircraft operator complies with this section, his present certificate of waiver is extended and does not terminate on its own termination date.

4. A new § 137.17 has been added on how certificates issued under the new part can be amended. This is consistent with other FAR's and will provide procedures for the amendment of a certificate by either the Administrator or the holder of the certificate.

5. The limitations upon the private agricultural aircraft operator are the same as those contained in the draft release. As adopted in § 137.35 the private agricultural aircraft operator may not conduct operations over property unless he is the owner or lessee of the property, he has ownership or other property (legal) interest in the crops located on the property. In addition, he may not conduct operations for compensation or hire, or over a congested area.

6. The "twilight" limitation in proposed § 137.31(k) (now § 137.47) has been dropped as unnecessary in view of the one-mile visibility requirement of that section.

7. Proposed §§ 137.33 and 137.37 (now §§ 137.49 and 137.51(b)) have been modified to limit the no hazard prohibition to persons or property on the surface. This modification is in keeping with the intent of the proposal to prohibit flights at such altitudes as to create a hazard to persons or property on the surface. A similar amendment has been made to proposed § 137.31(c) (now § 137.37) to conform with section 307(c) of the Federal Aviation Act of 1958.

8. The prohibitions respecting the dispensing of economic poisons contained in proposed § 137.31(d) (now § 137.39) have been changed to correspond with recommendations made by the U.S. Department of Agriculture at the public hearing. Since the Federal label does not carry a list of the disapproved uses of an economic poison, the rule has been changed to prohibit the use of the poison for a use other than that for which it is registered with the U.S. Department of Agriculture. In addition, the prohibition against the use of the poison contrary to instructions on the label relating to aerial application has been deleted because the labels do not as a rule give instructions for aerial applications.

9. The knowledge and skill requirements for pilots contained in proposed § 137.31(h) (now § 137.41(c)) now apply to the pilot in command rather than any pilot as contained in the proposal.

10. Section 137.51(b)(4) as adopted permits single engine agricultural aircraft operations over a congested area. This modification of the proposal is in accordance with the statement made by the Agency representative at the public hearing.

11. The experience requirements for operation over a congested area contained in proposed § 137.39(b) (now § 137.53(b)) apply to the pilot in command rather than any pilot as contained in the proposal.

12. In view of the many comments opposed to any additional paperwork by the operators, the Agency reviewed the record and report keeping requirements of the proposal and has concluded that the annual report contained in § 137.53 of the proposal could be eliminated. Those records specified in § 137.51 of the proposal for commercial operators are needed by the Agency for the proper discharge of its responsibilities and have been retained in § 137.71 of this rule.

13. A new § 137.77 has been added which requires the holder of a certificate issued to him under this part to return the certificate to the FAA whenever he ceases to conduct operations under the certificate. This provision is similar to that contained in other parts of the regulations and is needed by the Agency to keep its records current.

14. One comment strongly urged the issuance of an "Agricultural Rating" as a part of the pilot certificate for those pilots used in agricultural aircraft operations. This pilot rating procedure for the rating of the individual pilots was recommended in lieu of the proposed system of issuing an Agricultural Aircraft Operator Certificate to the owner or operator of the company or other organization conducting the business.

While this recommendation has merit, the Agency does not believe it will adequately accomplish the objectives of an Agricultural Aircraft Operator Certificate. The recommended pilot rating, issued on the basis of his previous experience in agricultural aircraft operations, would only relate to the competency of the pilot. The Agency would still be required to issue certificates of waiver with appropriate conditions and limitations for those operations requiring deviations from Part 91. As previously stated in the initial proposal contained in Draft Release No. 62-47, the use of the certificate of waiver has not been entirely satisfactory. It is only required if operations are to be conducted below the minimum altitudes, or in deviation of other provisions of Part 91. In effect, it constitutes an authorization to deviate from regulations under specified conditions and limitations, instead of a certification by the Agency that a particular person has shown that he meets specified qualifications in regard to aircraft and personnel to safely conduct agricultural aircraft operations in accordance with prescribed operating rules. The Agency believes that the latter certificate, issued, amended, suspended, or revoked within the framework of the provisions of the Federal Aviation Act of 1958, is a more desirable method to administer its responsibilities under that Act. Moreover, it will provide the applicant for, or the holder of, that certificate with the procedural benefits contained in the Act for the issuance, amendment, suspension, or revocation of a certificate which are not afforded to him under the certificate of waiver.

15. Comments received from representatives of State and local governments conducting their own aerial insecticide work for the abatement of mosquitoes and other pests which may affect the public health, have requested a clarification of the application of the regulation to those operations. Although these comments did not express general objection to compliance with the rules, one comment indicated that because of the emergency nature of the operations it would be impossible to comply with the notice requirements of proposed § 137.35.

An aircraft used exclusively in the service of any government or of any political subdivision thereof, and not engaged in carrying persons or property for compensation or hire, is a public aircraft within the meaning of the Federal Aviation Act of 1958. Public aircraft and the operators of such aircraft are not required to comply with the certification rules of the Federal Aviation Regulations. They must, however, comply with the air traffic or flight rules of Part 91 and this part, including the aircraft dispensing rules as prescribed under section 307(c) of the Act. Therefore, even though a State or local government engaging in agricultural aircraft operations is not required to comply with the certification requirements of this part when using public aircraft, it may elect to do so.

To clarify the application of this part to agricultural aircraft operations conducted with public aircraft, § 137.11(c) of the certification rules of Subpart B



now includes a provision that an agricultural aircraft operator certificate is not needed for those operations. Section 137.29(b) also specifies the sections of the operating rules that are not applicable to public aircraft.

With respect to emergency operations it is to be noted that as proposed in the notice of public hearing, and as adopted herein under § 137.1(b), a deviation from the operating rules of this part (Subpart C) is permitted to the extent necessary for relief and welfare activities approved by an agency of the United States, or of a State or local government. The Agency believes that this provision provides adequate authority for deviations from the notice and other requirements of that subpart as may be necessary under the circumstances of each case. However, in order to properly administer the use of such deviation by the operators concerned, a new paragraph (c) has been added to § 137.1 which will require the operator to submit a report of the deviations to the FAA. In view of the foregoing clarification of the applicability of the part, no distinction has been made between civil or public aircraft wherever the word aircraft is used.

Part 137 will become effective on January 1, 1966. This date will give all persons concerned approximately 6 months in which to prepare for operating under the new part.

Interested persons have been afforded an opportunity to participate in the making of this regulation, and due consideration has been given to all relevant matter presented.

In view of the foregoing, and, in addition, in consideration of the reasons set forth in both the notice of proposed rule making and the notice of public hearing, Title 14 of the Code of Federal Regulations is amended by adding a new Part 137—Agricultural Aircraft Operations, reading as hereinafter set forth, effective January 1, 1966.

Issued in Washington, D.C., on June 17, 1965.

N. E. HALABY,  
Administrator.

#### Subpart A—General

- Sec.  
137.1 Applicability.  
137.3 Definition of terms.

#### Subpart B—Certification Rules

- 137.11 Certificate required.  
137.13 Continuance of existing authority.  
137.15 Application for certificate.  
137.17 Amendment of certificate.  
137.19 Certification requirements.  
137.21 Duration of certificate.

#### Subpart C—Operating Rules

- 137.29 General.  
137.31 Aircraft requirements.  
137.33 Carrying of certificate.  
137.35 Limitations on private agricultural aircraft operator.  
137.37 Hazardous dispensing.  
137.39 Economic poison dispensing.  
137.41 Personnel.  
137.43 Airport traffic areas and control zones.  
137.45 Nonobstruction of airport traffic pattern.  
137.47 Operation without position lights.  
137.49 Operation over other than congested areas.

- Sec.  
137.51 Operation over congested areas: general.  
137.53 Operation over congested areas: pilots and aircraft.  
137.55 Business name: commercial agricultural aircraft operator.  
137.57 Availability of certificate.  
137.59 Inspection authority.

#### Subpart D—Records and Reports

- 137.71 Records: commercial agricultural aircraft operator.  
137.75 Change of address.  
137.77 Termination of operations.

AUTHORITY: The provisions of this Part 137 issued under secs. 313(a), 307(c), 601 and 607 of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1348(c), 1421, and 1427.

#### Subpart A—General

##### § 137.1 Applicability.

(a) This part prescribes rules governing—

(1) Agricultural aircraft operations within the United States; and

(2) The issue of commercial and private agricultural aircraft operator certificates for those operations.

(b) In a public emergency, a person conducting agricultural aircraft operations under this part may, to the extent necessary, deviate from the operating rules of this part for relief and welfare activities approved by an agency of the United States or of a State or local government.

(c) Each person who, under the authority of this section, deviates from a rule of this part shall, within 10 days after the deviation send to the nearest FAA District Office a complete report of the aircraft operation involved, including a description of the operation and the reasons for it.

##### § 137.3 Definition of terms.

For the purposes of this part—  
“Agricultural aircraft operation” means the operation of an aircraft for the purpose of (1) dispensing any economic poison, (2) dispensing any other substance intended for plant nourishment, soil treatment, propagation of plant life, or pest control, or (3) for engaging in other activities directly affecting agriculture, horticulture, or forest preservation; and  
“Economic poison” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary of Agriculture shall declare to be a pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

(c) The Administrator grants a request to amend a certificate if he determines that safety in air commerce and the public interest so allow.

with this part, conduct agricultural aircraft operations with a rotorcraft with external dispensing equipment in place without a rotorcraft external-load operator certificate.

(c) A Federal, State, or local government conducting agricultural aircraft operations with public aircraft need not comply with this subpart.

##### § 137.13 Continuance of existing authority.

Any person conducting agricultural aircraft operations under a certificate of waiver issued by the Administrator that is in effect on the day before the date on which this part becomes effective may continue to operate under that certificate if he applies for an agricultural aircraft operator certificate before the effective date of this part. Unless the certificate of waiver is sooner suspended or revoked, this extension of authority terminates when he is given notice of final action on his application.

##### § 137.15 Application for certificate.

An application for an agricultural aircraft operator certificate is made on a form and in a manner prescribed by the Administrator, and filed with the FAA District Office that has jurisdiction over the area in which the applicant's home base of operations is located.

##### § 137.17 Amendment of certificate.

(a) The Administrator may amend an agricultural aircraft operator certificate—

(1) On his own initiative, under section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429) and Part 13 of this chapter; or

(2) Upon application by the holder of that certificate.

(b) An application to amend an agricultural aircraft operator certificate is submitted on a form and in a manner prescribed by the Administrator. The applicant must file the application with the FAA District Office having jurisdiction over the area in which the applicant's home base of operations is located at least 15 days before the date that he proposes the amendment become effective, unless a shorter filing period is approved by that office.

(c) The Administrator grants a request to amend a certificate if he determines that safety in air commerce and the public interest so allow.

(d) Within 30 days after receiving a refusal to amend, the holder may petition the Administrator personally to reconsider the refusal.

##### § 137.19 Certification requirements.

(a) General. An applicant for a private agricultural aircraft operator certificate is entitled to that certificate if he shows that he meets the requirements of paragraphs (b), (d), and (e) of this section. An applicant for a commercial agricultural aircraft operator certificate is entitled to that certificate if he shows that he meets the requirements of paragraphs (c), (d), and (e) of this section. However, if an applicant applies for an agricultural aircraft operator certificate containing a prohibition against the dispensing of economic poisons, that appli-

#### Subpart B—Certification Rules

##### § 137.11 Certificate required.

(a) Except as provided in § 137.13 and paragraph (c) of this section, no person may conduct agricultural aircraft operations without, or in violation of, an agricultural aircraft operator certificate issued under this part.

(b) Notwithstanding Part 133 of this chapter, an operator may, if he complies



cant is not required to demonstrate the knowledge required in paragraphs (e) (1) (i) through (iv) of this section.

(b) *Private operator—pilot.* The applicant must hold a current U.S. private, commercial, or airline transport pilot certificate and be properly rated for the aircraft to be used.

(c) *Commercial operator—pilots.* The applicant must have available the services of at least one person who holds a current U.S. commercial or airline transport pilot certificate and who is properly rated for the aircraft to be used. The applicant himself may be the person available.

(d) *Aircraft.* The applicant must have at least one certificated and airworthy aircraft, equipped for agricultural operation.

(e) *Knowledge and skill tests.* The applicant must show, or have the person who is designated as the chief supervisor of agricultural aircraft operations for him show, that he has satisfactory knowledge and skill regarding agricultural aircraft operations, as described in subparagraphs (1) and (2) of this paragraph. However, an applicant need not comply with this paragraph if, at the time he applies for an agricultural aircraft operator certificate, he holds a current certificate of waiver for conducting agricultural aircraft operations or the person who is to supervise agricultural aircraft operations for him holds such a certificate, and if his record of operation under the waiver has not disclosed any question regarding the safety of his flight operations or his competence in dispensing agricultural materials or chemicals.

(1) The test of knowledge consists of the following:

(i) Steps to be taken before starting operations, including survey of the area to be worked.

(ii) Safe handling of economic poisons and the proper disposal of used containers for those poisons.

(iii) The general effects of economic poisons and agricultural chemicals on plants, animals, and persons, with emphasis on those normally used in the areas of intended operations; and the precautions to be observed in using poisons and chemicals.

(iv) Primary symptoms of poisoning of persons from economic poisons, the appropriate emergency measures to be taken, and the location of poison control centers.

(v) Performance capabilities and operating limitations of the aircraft to be used.

(vi) Safe flight and application procedures.

(2) The test of skill consists of the following maneuvers that must be shown in any of the aircraft specified in paragraph (d) of this section, and at that aircraft's maximum certificated take-off weight, or the maximum weight established for the special purpose load, whichever is greater:

(i) Short-field and soft-field takeoffs (airplanes and gyroplanes only).

(ii) Approaches to the working area.

(iii) Flare-outs.

(iv) Swath runs.

(v) Pullups and turnarounds.

(vi) Rapid deceleration (quick stops) in helicopters only.

#### § 137.21 Duration of certificate.

An agricultural aircraft operator certificate is effective until it is surrendered, suspended, or revoked. The holder of an agricultural aircraft operator certificate that is suspended or revoked shall return it to the Administrator.

### Subpart C—Operating Rules

#### § 137.29 General.

(a) Except as provided in paragraph (b) of this section this subpart prescribes rules that apply to persons and aircraft used in agricultural aircraft operations conducted under this part.

(b) Sections 137.31 through 137.35, 137.41, and 137.53, through 137.59 do not apply to persons and aircraft used in agricultural aircraft operations conducted with public aircraft.

#### § 137.31 Aircraft requirements.

No person may operate an aircraft unless that aircraft—

(a) Meets the requirements of § 137.19 (d); and

(b) Is equipped with a suitable and properly installed shoulder harness for use by each pilot.

#### § 137.33 Carrying of certificate.

No person may operate an aircraft unless a facsimile of the agricultural aircraft operator certificate, under which the operation is conducted, is carried on that aircraft. The facsimile shall be presented for inspection upon the request of the Administrator or any Federal, State, or local law enforcement officer.

#### § 137.35 Limitations on private agricultural aircraft operator.

No person may conduct an agricultural aircraft operation under the authority of a private agricultural aircraft operator certificate—

(a) For compensation or hire;

(b) Over a congested area; or

(c) Over any property unless he is the owner or lessee of the property, or has ownership or other property interest in the crop located on that property.

#### § 137.37 Hazardous dispensing.

No persons may dispense, or cause to be dispensed, from an aircraft, any material or substance in a manner that creates a hazard to persons or property on the surface.

#### § 137.39 Economic poison dispensing.

No person may dispense or cause to be dispensed from an aircraft, any economic poison that is registered with the U.S. Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 (as amended)—

(a) For a use other than that for which it is registered;

(b) Contrary to any safety instructions or use limitations on its label; or

(c) In violation of any law or regulation of the United States.

#### § 137.41 Personnel.

(a) *Information.* The holder of an agricultural aircraft operator certificate

shall insure that each person used in the holder's agricultural aircraft operation is informed of that person's duties and responsibilities for the operation.

(b) *Supervisors.* No person may supervise an agricultural aircraft operation unless he has met the knowledge and skill requirements of § 137.19(e).

(c) *Pilot in command.* No person may act as pilot in command of an aircraft unless he holds a pilot certificate and rating prescribed by § 137.19 (b) or (c), as appropriate to the type of operation conducted. In addition, he must demonstrate to the holder of the Agricultural Aircraft Operator Certificate conducting the operation that he has met the knowledge and skill requirements of § 137.19(e). If the holder of that certificate has designated a person under § 137.19(e) to supervise his agricultural aircraft operations the demonstration must be made to the person so designated. However, a demonstration of the knowledge and skill requirement is not necessary for any pilot in command who—

(1) Is, at the time of the filing of an application by an agricultural aircraft operator, working as a pilot in command for that operator; and

(2) Has a record of operation under that applicant that does not disclose any question regarding the safety of his flight operations or his competence in dispensing agricultural materials or chemicals.

#### § 137.43 Airport traffic areas and control zones.

(a) Except for flights to and from a dispensing area, no person may operate an aircraft within an airport traffic area, or within a control zone having an operative control tower, unless authorization for that operation has been obtained from the control tower concerned.

(b) No person may operate an aircraft in weather conditions below VFR minimums within a control zone not having an operative control tower unless authorization for that operation has been obtained from the appropriate ATC facility.

#### § 137.45 Nonobservance of airport traffic pattern.

Notwithstanding Part 91 of this chapter, the pilot in command of an aircraft may deviate from an airport traffic pattern when authorized by the control tower concerned. At an airport without a functioning control tower, the pilot in command may deviate from the traffic pattern if—

(a) Prior coordination is made with the airport management concerned;

(b) Deviations are limited to the agricultural aircraft operation;

(c) Except in an emergency, landing and takeoffs are not made on ramps, taxiways, or other areas of the airport not intended for such use; and

(d) The aircraft at all times remains clear of, and gives way to, aircraft conforming to the traffic pattern for the airport.

#### § 137.47 Operation without position lights.

Notwithstanding Part 91 of this chapter, an aircraft may be operated without position lights if prominent unlighted



objects are visible for at least 1 mile and takeoffs and landings at—

(a) Airports with a functioning control tower are made only as authorized by the control tower operator; and

(b) Other airports are made only with the permission of the airport management and no other aircraft operations requiring position lights are in progress at that airport.

**§ 137.49 Operation over other than congested areas.**

Notwithstanding Part 91 of this chapter, an aircraft may be operated over other than congested areas below 500 feet above the surface and closer than 500 feet to persons, vessels, vehicles, and structures, if the operations are conducted without creating a hazard to persons or property on the surface.

**§ 137.51 Operation over congested areas: general.**

(a) Notwithstanding Part 91 of this chapter, an aircraft may be operated over a congested area at altitudes required for the proper accomplishment of the agricultural aircraft operation if the operation is conducted—

(1) With the maximum safety to persons and property on the surface, consistent with the operation; and

(2) In accordance with the requirements of paragraph (b) of this section.

(b) No person may operate an aircraft over a congested area except in accordance with the requirements of this paragraph.

(1) Prior written approval must be obtained from the appropriate official or governing body of the political subdivision over which the operations are conducted.

(2) Notice of the intended operation must be given to the public by some effective means, such as daily newspapers, radio, television, or door-to-door notice.

(3) A plan for each complete operation must be submitted to, and approved by appropriate personnel of the Federal Aviation Agency District Office having jurisdiction over the area where the operation is to be conducted. The plan must include consideration of obstructions to flight; the emergency landing capabilities of the aircraft to be used; and any necessary coordination with air traffic control.

(4) Single engine aircraft must be operated as follows:

(i) Except for helicopters, no person may take off a loaded aircraft, or make a turnaround over a congested area.

(ii) No person may operate an aircraft over a congested area below the altitudes prescribed in Part 91 of this chapter except during the actual dispensing operation, including the approaches and departures necessary for that operation.

(iii) No person may operate an aircraft over a congested area during the actual dispensing operation, including the approaches and departures for that operation, unless it is operated in a pattern and at such an altitude that the aircraft can land, in an emergency, without endangering persons or property on the surface.

(5) Multiengine aircraft must be operated as follows:

(i) No person may take off a multiengine airplane over a congested area except under conditions that will allow the airplane to be brought to a safe stop within the effective length of the runway from any point on takeoff up to the time of attaining, with all engines operating at normal takeoff power, 105 percent of the minimum control speed with the critical engine inoperative in the takeoff configuration or 115 percent of the power-off stall speed in the takeoff configuration, whichever is greater, as shown by the accelerate stop distance data. In applying this requirement, takeoff data is based upon still-air conditions, and no correction is made for any uphill gradient of 1 percent or less when the percentage is measured as the difference between elevation at the end points of the runway divided by the total length. For uphill gradients greater than 1 percent, the effective takeoff length of the runway is reduced 20 percent for each 1-percent grade.

(ii) No person may operate a multiengine airplane at a weight greater than the weight that, with the critical engine inoperative, would permit a rate of climb of at least 50 feet per minute at an altitude of at least 1,000 feet above the elevation of the highest ground or obstruction within the area to be worked or at an altitude of 5,000 feet, whichever is higher. For the purposes of this subdivision, it is assumed that the propeller of the inoperative engine is in the minimum drag position; that the wing flaps and landing gear are in the most favorable positions; and that the remaining engine or engines are operating at the maximum continuous power available.

(iii) No person may operate any multiengine aircraft over a congested area below the altitudes prescribed in Part 91 of this chapter except during the actual dispensing operation, including the approaches, departures, and turnarounds necessary for that operation.

**§ 137.53 Operation over congested areas: pilots and aircraft.**

(a) *General.* No person may operate an aircraft over a congested area except in accordance with the pilot and aircraft rules of this section.

(b) *Pilots.* Each pilot in command must have at least—

(1) 25 hours of pilot-in-command flight time in the make and basic model of the aircraft, at least 10 hours of which must have been acquired within the preceding 12 calendar months; and

(2) 100 hours of flight experience as pilot in command in dispensing agricultural materials or chemicals.

(c) *Aircraft.* (1) Within the preceding 100 hours of time in service, each aircraft must have—

(i) Had a 100-hour or periodic inspection by a person authorized by Part 65 or 145 of this chapter; or

(ii) Been maintained under a progressive inspection system.

(2) If other than a helicopter, it must be equipped with a device capable of jet-

tisoning at least one-half of the aircraft's maximum authorized load of agricultural material within 45 seconds. If the aircraft is equipped with a device for releasing the tank or hopper as a unit, there must be a means to prevent inadvertent release by the pilot or other crewmember.

**§ 137.55 Business name: commercial agricultural aircraft operator.**

No person may operate under a business name that is not shown on his commercial agricultural aircraft operator certificate.

**§ 137.57 Availability of certificate.**

Each holder of an agricultural aircraft operator certificate shall keep that certificate at his home base of operations and shall present it for inspection on the request of the Administrator or any Federal, State, or local law enforcement officer.

**§ 137.59 Inspection authority.**

Each holder of an agricultural aircraft operator certificate shall allow the Administrator at any time and place to make inspections, including on-the-job inspections, to determine compliance with applicable regulations and his agricultural aircraft operator certificate.

**Subpart D—Records and Reports**

**§ 137.71 Records: commercial agricultural aircraft operator.**

(a) Each holder of a commercial agricultural aircraft operator certificate shall maintain and keep current, at the home base of operations designated in his application, the following records:

(1) The name and address of each person for whom agricultural aircraft services were provided;

(2) The date of the service;

(3) The name and quantity of the material dispensed for each operation conducted; and

(4) The name, address, and certificate number of each pilot used in agricultural aircraft operations and the date that pilot met the knowledge and skill requirements of § 137.19(e).

(b) The records required by this section must be kept at least 12 months and made available for inspection by the Administrator upon request.

**§ 137.75 Change of address.**

Each holder of an agricultural aircraft operator certificate shall notify the FAA in writing in advance of any change in the address of his home base of operations.

**§ 137.77 Termination of operations.**

Whenever a person holding an agricultural aircraft operator certificate ceases operations under this part, he shall surrender that certificate to the FAA District Office last having jurisdiction over his operation.

**NOTE:** The recordkeeping and reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[F.R. Doc. 65-6619; Filed, June 23, 1965; 8:46 a.m.]



## Title 17—COMMODITY AND SECURITIES EXCHANGES

### Chapter II—Securities and Exchange Commission

#### PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

##### Commission Action; Correction

In the document revising Part 240 of Chapter II of Title 17 of the Code of Federal Regulations, published on pages 6114 and 6115 in the FEDERAL REGISTER dated April 30, 1965, the following corrections are made:

1. The reference to "§§ 240.13a11-1 and 240.12h-2" in the first sentence under *Commission action* should read "§§ 240.3a11-1 and 240.12h-2".

2. The parenthetical reference to "§ 240.13a11-1" in the concluding paragraph of the document should read "§ 240.3a11-1".

By the Commission, June 18, 1965.

[SEAL]

ORVAL L. DUBOIS,  
Secretary.

[F.R. Doc. 65-6620; Filed, June 23, 1965;  
8:46 a.m.]

## Title 21—FOOD AND DRUGS

### Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

#### SUBCHAPTER C—DRUGS

##### PART 148i—NEOMYCIN SULFATE

#### Neomycin Sulfate-Polymyxin B Sulfate-Gramicidin Ophthalmic Solution

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended; 21 U.S.C. 357) and under the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (21 CFR 2.90), §148i.20(a) (3) (ii) (d) (2) is amended to provide for a special sampling procedure in regard to sterility testing. As amended, the affected portion reads as follows:

§148i.20 Neomycin sulfate-polymyxin B sulfate-gramicidin ophthalmic solution.

- (a) \* \* \*
- (3) \* \* \*
- (ii) \* \* \*
- (d) \* \* \*

(2) For sterility testing: 20 immediate containers, collected at regular intervals

throughout each filling operation, except that if the product is sterilized after filling, a representative sample consisting of 10 immediate containers from each sterilizer load. If only 1 sterilizer load is involved, the sample shall consist of 20 immediate containers.

Notice and public procedure and delayed effective date are unnecessary prerequisites to the promulgation of this order, and I so find, since the change, which provides a sampling procedure appropriate to the subject drug when it is sterilized after filling into final containers rather than before, is of a technical, noncontroversial nature and is consistent with the requirements that the drug be safe and efficacious.

*Effective date.* This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463 as amended; 21 U.S.C. 357)

Dated: June 18, 1965.

GEO. P. LARRICK,  
Commissioner of Food and Drugs.

[F.R. Doc. 65-6647; Filed, June 23, 1965;  
8:48 a.m.]

## Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

### Chapter 9—Atomic Energy Commission

#### PART 9-15—CONTRACT COST PRINCIPLES AND PROCEDURES

##### Miscellaneous Amendments

The following section is added:

§ 9-15.000-50 Policy, cost-type contractor procurement.

The following subpart of FPR 1-15 and this AECPR 9-15 constitute specific provisions which the contracting officer shall bring to the attention of Class A and Class B cost-type contractors as constituting areas which require appropriate treatment in the development of statements of contractor procurement practices in order to carry out the basic AEC procurement policy set forth in AECPR § 9-1.5203:

Subpart or part	Subject
FPR 1-15.3	Principles for Determining Applicable Costs Under Research Contracts With Educational Institutions.
AECPR 9-15...	Contract Cost Principles and Procedures.

Section 9-15.000-4 *Cost determination based on audit*, paragraph (a) is revised to read as follows:

§ 9-15.000-4 Cost determination based on audit.

(a) The amount reimbursable under cost-type contracts shall be determined in accordance with the terms of the respective contracts on the basis of audit. In the event that the contractual terms differ or are inconsistent (see § 9-15.0003 for approval of deviations) with the principles stated herein the contractual terms control. The audit is performed directly by AEC (or by the cognizant Federal agency pursuant to arrangements made by the AEC) in the case of cost-type contracts. Contracting officers shall assure that cost-type prime contractors assume the responsibility for audit of subcontractors (and provide for the audit of lower tier subcontractors by the subcontractor immediately preceding in the contractual chain) except as noted in this paragraph. Exceptions may be made to this general principle of subcontractors being audited by the next higher-tier contractor, where the latter is interrelated with the subcontractor involved, does not have the necessary audit facilities or for other reasons is not in a position to perform the subcontract audit in a manner satisfactory to the AEC. In the event of such exception, the subcontract audit responsibility shall rest with the successively higher-tier contractor (or ultimately AEC), but responsibility for determining the costs reimbursable to the subcontractor remains with the next higher-tier contractor on the basis of such audit.

Section 9-15.0008, the heading is revised to read as follows:

§ 9-15.0008 Negotiated fixed-price contracts where costs incurred are a factor in determining the amount payable.

§ 9-15.0008-1 [Amended]

§ 9-15.0008-1 *General policy*, in paragraph (a), line 4, the words "and subcontracts" are deleted.

(Sec. 161, Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205, Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486)

*Effective date.* These amendments are effective upon publication in the FEDERAL REGISTER.

Dated at Germantown, Md., this 17th day of June 1965.

For the U.S. Atomic Energy Commission.

R. J. HART,  
Acting Director, Division of Contracts.

[F.R. Doc. 65-6646; Filed, June 23, 1965;  
8:48 a.m.]